

Retailers' Occupation Tax does not apply where sellers ship goods by carrier or by mail, according to the terms of agreements with purchasers, and the seller delivers the goods from a point within Illinois to a point outside Illinois and the goods are not to be returned to Illinois. See 86 Ill. Adm. Code 130.605. (This is a PLR).

September 15, 2000

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of July 26, 2000. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>) appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither to COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

We are requesting a private letter ruling seeking confirmation that the coal purchase transactions to be entered into by our client, COMPANY ('Company A'), will not be subject to the Illinois Retailer's Occupation Tax ('ROT') or Use Tax under the circumstances described below.

Statement of Facts

Company A operates a _____ generating facility in CITY/STATE. On February 1, 1986, Company A entered into a AGREEMENT ('Agreement') with BUSINESSSS ('Mine B'), under which the Illinois mines currently sell coal to Company for use at its STATE facility.

Under the Agreement, Mine B is expressly 'required to deliver the coal purchased hereunder, and title to the coal purchased hereunder shall pass, to Purchaser, at the CORPORATION, near CITY/STATE2, or at any other point that [Company A] may direct in its sole discretion,' with risk of loss passing from the vendor to Company A at the mine location. Company A no longer takes delivery of any coal at CITY/STATE2 and now takes delivery of all its coal at its generating facility in CITY/STATE. The Agreement also provides that each shipment will be made pursuant to a Uniform Straight Bill of Lading, and in accordance with those provisions, Company A has instructed Mine B to prepare a Bill of Lading for each shipment showing the coal mine vendor, Mine B, as shipper/consignor, Company A as consignee, and CITY/STATE as delivery destination, the location of Company A's generating facility.

Although the Agreement literally provides that Mine B will arrange for transportation of the coal, since concluding the Agreement Company A has entered into a contract with

CARRIER ('Carrier C') for the transportation of the coal directly to Company A's STATE facility from various locales, including the Illinois mine. Under the CONTRACT between Company A and Carrier C ('Contract'):

- (1) Company A is required to use Carrier C to transport a minimum of 90% of its coal requirements directly to its generating facility in CITY/STATE,
- (2) Company A pays Carrier C directly, rather than having its coal vendors pay for the transportation in the first instance,
- (3) Carrier C has full control and custody of the coal during transport,
- (4) Carrier C bears the full risk of loss on the coal transported,
- (5) The terms of the Contract control in the case of any conflict with the bill of lading or Carrier C's tariffs,
- (6) Carrier C furnishes the quantity of rail cars necessary to transport coal to Company A's STATE generating facility, and
- (7) Company A has an option to increase the number of rail cars it furnishes to Carrier C for transport by Company C of Company A's coal to its STATE generating facility.

Carrier C not only transports coal from the Illinois mines to Company A's STATE facility, but also transports coal from other locations to Company A's STATE facility. For non-Illinois shipments, Company A currently provides Carrier C with a portion of the rail cars necessary to transport the coal to the STATE facility. In exchange, Company A pays a reduced transportation rates for these shipments. To enjoy a further reduction in transportation costs, Company A is considering extending this arrangement to shipments originating in Illinois.

Specifically, the Contract provides as follows with respect to shipments involving Carrier C's use of Company A's rail cars:

- (1) Company A agrees to furnish a certain number of rail cars which it either owns or leases from others to Carrier C solely for Carrier C's use in providing transportation services under the Contract,
- (2) Carrier C agrees to furnish all the remaining rail cars required for successful performance under the Contract,
- (3) While Carrier C does not pay rent, mileage, or per diem for the use of Company A's rail cars, Carrier C charges lower rates for transportation provided with Company A's rail cars, and
- (4) The Contract's other terms are unaffected by the use of Company A's rail cars, e.g., content of the bill of lading, risk of loss during shipment, etc.

Ruling Requested

Company A's provision of rail cars to Carrier C, for Carrier C's use in transporting coal from the Illinois mines to the STATE facility, will not cause Company A's purchase of coal from Mine B to become subject to the Illinois ROT or the Use Tax.

Authority

86 Illinois Administrative Code 130.605:

* * *

(c) Nor does the tax apply to gross receipts from sales in which the seller, by carrier (when the carrier is not also the purchaser) or by mail, under the terms of his agreement with the purchaser, delivers the goods from a point in this State to a point outside this State not to be returned to a point within this State.

(d) The place at which title to the property passes to the purchaser is immaterial. The place at which the contract of sale or contract to sell is negotiated and executed and the place at which the purchaser resides are also immaterial. Sales of the type described in Subsections (b) and (c) are deemed to be within the protection of the Commerce Clause of the Constitution of the United States.

(e) To establish that the gross receipts from any given sale are exempt because the tangible personal property is delivered by the seller from a point within this State to a point outside this State under the terms of an agreement with the purchaser, the seller will be required to retain in his records, to support deductions taken on his tax returns proof which satisfies the Department that there was such an agreement and a bona fide delivery outside this State of the property which is sold. The most acceptable proof of this fact will be:

(1) If shipped by common carrier, a waybill or bill of lading requiring delivery outside this State;

(2) if sent by mail, an authorized receipt from the United States Post Office Department for articles sent by registered mail, parcel post, ordinary mail or otherwise, showing the name of the addressee, the point outside Illinois to which the property is mailed and the date of such mailing; if the receipt does not comply with these requirements, other supporting evidence will be required;

(3) if sent by seller's own transportation equipment, a trip sheet signed by the person making delivery for the seller and showing the name, address and signature of the person to whom the goods were delivered outside this State; or, in lieu thereof, an affidavit signed by the purchaser or his representative, showing the name and address of the seller, the name and address of the purchaser and the time and place of such delivery outside Illinois by the seller; together with other supporting data as required by Section 130.810 of this Part and by Section 7 of the Act.

Argument

According to the regulation, the Commerce Clause of the United States Constitution protects, and exempts from Illinois taxation, sales 'in which the seller, by carrier...or by mail, under the terms of his agreement with the purchaser, delivers the goods from a point in this State to a point outside this State not to be returned to a point within this State.' 86 Ill. Adm. Code 130.605(c). In order to establish that a transaction falls within this exemption, 'the seller will be required to retain in his records, to support deductions taken on his tax returns proof which satisfies the Department that there was such an agreement and a bona fide delivery outside this State of the property which is sold.' 86 Ill. Adm. Code 130.605(e). The best method of establishing this with respect to goods shipped by common carrier is 'a waybill or bill of lading requiring delivery outside this State.' 86 Ill. Adm. Code 130.605(e)(1).

Pursuant to the terms of the Agreement and Company A's direction, Mine B will prepare a bill of lading instructing Carrier C to deliver the coal to the destination at CITY/STATE, the location of Company A's STATE generating facility. Pursuant to the Agreement and Contract, the bill of lading will indicate Mine B as shipper/consignor and Company A as consignee. As a matter of fact, the coal will be delivered by Carrier C and consumed at Company A's STATE facility. Thus, the coal sales in issue will satisfy the requirements of 86 Illinois Administrative Code 130.605(c)&(e) and will not be subject to ROT or Use Tax.

The requirements of 86 Illinois Administrative Code 130.605(c)&(e) focus on the parties' agreement that delivery of the tangible personal property take place outside the state and that delivery to the out-of-state destination actually occur—all as evidenced by the bill of lading. The facts that company A contracts directly with Carrier C and provides rail cars to Carrier C for Carrier C's own use does not affect this analysis. ST 92-0199 (with respect to buyer contracting directly with carrier). Neither fact renders Carrier C the agent or representative of Company A for purposes of taking delivery of the coal within Illinois.

We respectfully request confirmation of this conclusion in a letter ruling. The undersigned is not aware of any authority contrary to this conclusion.

Neither an audit nor litigation related to these matters is pending with the Illinois Department of Revenue. This ruling is requested for taxable periods ending on or after August 1, 2000. We have enclosed an executed Power of Attorney authorizing the undersigned to represent Company A in this matter.

Please contact me at ##### if you have any questions concerning this matter, or if for any reason you tentatively determine that the requested ruling cannot be issued.

Enclosed is a copy of 86 Ill. Adm. Code 130.605 concerning Sales of Property Originating in Illinois. As you know, subpart (c) of this regulation states that Retailers' Occupation Tax does not apply where sellers ship goods by carrier or by mail, according to the terms of agreements with

purchasers, and the seller delivers the goods from a point within Illinois to a point outside Illinois and the goods are not to be returned to Illinois. Such sales are considered to be sales in interstate commerce and are exempt from Illinois and local Retailers' Occupation Tax, although there may be a tax liability in the other state involved in the transaction. For purposes of this exemption, the place at which title to the property passes to the purchaser is immaterial, 86 Ill. Adm. Code 130.605(d).

Sales are not deemed to be in interstate commerce if the purchaser or his representative receives the physical possession of the property in Illinois, even if such property is immediately transported outside of Illinois, 86 Ill. Adm. Code 130.605(a)(1) and (2).

For the exemption to apply, the delivery outside of Illinois must be actually made. The documentation the seller must keep in its records includes, if shipped by common carrier, a waybill or bill of lading requiring delivery outside this State, 86 Ill. Adm. Code 130.605(d).

In the situation you have presented, Bills of Lading for the coal shipments are prepared pursuant to the AGREEMENT between COMPANY and BUSINESS that show BUSINESS, the seller, as the shipper/consignor, and COMPANY, the purchaser, as the consignee. The coal will be shipped from the Illinois mine to COMPANY's CITY/STATE facility. So long as that is the case, the transactions will be exempt from Illinois Retailers' Occupation and Use Tax liabilities on the basis of being in interstate commerce pursuant to 86 Ill. Adm. Code 130.605.

The fact that the purchaser pays for the carrier does not destroy the exemption. Similarly, the fact that the purchaser owns and provides certain rail cars for transportation of the coal from Illinois to the purchaser's STATE facility will not cancel the exemption if the above noted requirements are met.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.